**International Longshoremen Association Local 1423 (Savannah Maritime Association) *and* Ronnie L. Jones *and* Bruce Carreker.** Cases 12–CB–3388–1 and 12–CB–3388–2

March 30, 1992

## DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS DEVANEY AND OVIATT

On October 18, 1991, Administrative Law Judge Howard I. Grossman issued the attached decision. The Respondent filed exceptions and a supporting brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and brief and has decided to affirm the judge's rulings, findings,[1] and conclusions and to adopt the recommended Order as modified.[2]

## ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge and orders that the Respondent, International Longshoreman Association Local 1423, Brunswick, Georgia, its officers, agents, and representatives, shall take the action set forth in the Order as modified.

1. Substitute the following for paragraph 1(b).

''(b) Placing Ronnie L. Jones, Bruce Carreker, or any other employee or applicant for employment on probation or suspension, and denying them referral for employment or otherwise discriminating against them because they are not members of a union or because of their protected activities.''

2. Substitute the attached notice for that of the administrative law judge.

[1] The Respondent has excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

Additionally, the Respondent asserts that the judge's findings are a result of bias. After a careful examination of the entire record, we are satisfied that this allegation is without merit.

[2] We have modified the judge's recommended Order and notice to conform to the violations found.

## APPENDIX

NOTICE TO MEMBERS
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

Section 7 of the Act gives employees these rights.

To organize
To form, join, or assist any union
To bargain collectively through representatives of their own choice
To act together for other mutual aid or protection
To choose not to engage in any of these protected concerted activities.

WE WILL NOT operate our hiring hall in a manner that gives preferences for employment to members of a union over nonmembers.

WE WILL NOT place Ronnie L. Jones, Bruce Carreker, or any other employee or applicant for employment on probation or suspension, and WE WILL NOT deny them referral for employment or otherwise discriminate against them because they are not members of a union or because of their protected activities.

WE WILL NOT cause or attempt to cause any employer to deny employment to, or otherwise discriminate against, Ronnie L. Jones, Bruce Carreker, or any other employee or applicant for employment, in violation of Section 8(a)(3) of the National Labor Relations Act.

WE WILL NOT inform employees or applicants for employment that other employees or applicants have been denied referrals for employment because of their protected activities.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL refer Ronnie L. Jones and Bruce Carreker for employment to positions for which they are qualified on an equal and nondiscriminatory basis with other employees and applicants.

WE WILL notify Ronnie L. Jones and Bruce Carreker, separately and in writing, that our hiring hall is available to them on an equal and nondiscriminatory basis with other employees and applicants.

WE WILL make Ronnie L. Jones and Bruce Carreker whole for any loss of earnings or other benefits either

may have suffered because of the discrimination against them, with interest.

INTERNATIONAL LONGSHOREMAN ASSOCIATION LOCAL 1423

*E. Walter Bowman, Esq.*, for the General Counsel.
*Orion L. Douglas, Esq., of* Brunswick, Georgia, for the Respondent.
*Ronnie L. Jones*, and *Bruce Carreker*, appearing pro se.

## DECISION

### STATEMENT OF THE CASE

HOWARD I. GROSSMAN, Administrative Law Judge. The original charge in Case 12–CB–3388 was filed on August 9 1990,[1] by Ronnie L. Jones (Jones), and amended charges thereafter on September 21 and December 17. The original charge in Case 12–CB–3388–2 was filed on September 26 by Bruce Carreker (Carreker). Complaint issued on February 28, 1991, and an amended complaint on March 22, 1991. It alleges that International Longshoreman Association Local 1423 (Respondent, or the Union) violated Section 8(b)(1)(A) of the National Labor Relations Act (the Act) by (1) granting seniority for hiring purposes in the use of its hiring hall only to union members; (2) denying seniority for such use to Jones and Carreker because they were not members; (3) placing Jones and Carreker on probation because of their protected internal union activities; (4) refusing to refer Jones and Carreker for employment from on or about May 7 to on or about May 21 because of there activities, and (5) placing them on a 90-day suspension precluding use of its hiring hall, beginning June 29, for the same reason.

The complaint also alleges that Respondent violated Section 8(b)(1)(A) by telling employees that they would be referred out of the hiring hall only when Respondent saw fit, that it would be futile for employees to attempt to use the hall, and that employees should not bother coming to the hall because they could not get a job. In addition, the complaint alleges that the refusal to refer and the suspension of Jones and Carreker caused employers to discriminate against them in violation of Section 8(a)(3) of the Act, and was thus violative of Section 8(b)(2).

This case was heard before me in Brunswick, Georgia, on May 28, 1991. Thereafter, the General Counsel and Respondent filed briefs. On the entire record, including my observation of the demeanor of the witnesses, I make the following

## FINDINGS OF FACT

### I. JURISDICTION

The pleadings as amended at the hearing establish that Savannah Maritime Association (the Association) is an organization composed of employers engaged in longshore and stevedoring work in and around the port of Brunswick, Georgia, and which exists for the purpose, inter alia, of representing its employer-members in negotiating and administering collective-bargaining agreements with various labor organizations, including Respondent. During the 12-month period preceding issuance of the complaint, the aforesaid employer-members received revenues in excess of $50,000 from shipping companies which meet a jurisdictional standard of the Board other than indirect. The Association is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

Respondent is a labor organization within the meaning of Section 2(5) of the Act.

### II. THE ALLEGED UNFAIR LABOR PRACTICES

#### A. *The Union's Hiring Hall and Referral Practices*

The pleadings as amended at the hearing establish that, since on or about February 2, the Association and Respondent have entered into and maintained a practice requiring that Respondent be the sole and exclusive source of referrals of employees for employment with the employer-members of the Association.

The Union has approximately 42 members, all of them male. Each member has lifetime seniority according to a ranking system which accords preference to those members who ''came into the industry'' before others. The member receives a card with the letter A, B, C, or D, which designates his seniority. The only way to achieve seniority is to be admitted to the Union by vote of the members.[2] The last time the Union accepted members was in about 1986 or 1987.[3]

Applicants for employment who are not union members are designated ''casual'' laborers, and are granted work permits. After the ''header'' has hired union members according to their ranking, he then selects such additional help as he may need from the casuals. All users of the hall, including those who are not union members, pay 6 percent of their earnings to the hall.

Jones testified that, after the admission of new members in about 1987, the union president told him that casuals who had worked 700 hours in the prior year would get seniority over other casuals who had not achieved those hours, and that their work permits were stamped to indicate this fact. The alleged discriminatees contend that the Union did not adhere to this plan. Union President Scriven stated that working 700 hours entitled an employee to certain ''benefits,'' not membership and seniority. I credit Jones.

#### B. *Objections to the Referral System and the Trip to Savannah*

##### 1. Summary of the evidence

Jones testified that he discussed the seniority system with Scriven on several occasions after he and 12 other casuals had achieved 700 hours. Scriven replied that the men had no seniority and worked only as needed.

Scriven was asked whether a group of individuals requested work shortly before or on the same day that they left for Savannah.[4] He testified that they asked him for union membership. Scriven stated initially that this conversation

[1] All dates are in 1990 unless otherwise specified.

[2] Testimonies of Union President Frank Scriven, and International Officer John Mackey.

[3] Testimony of Ronnie L. Jones.

[4] As described hereinafter the purpose of the Savannah trip was to protest the operation of the Brunswick hiring hall.

took place while he was packing to go to Miami for a negotiation session. He told the individuals that he would take up the matter with them upon his return. Scriven contended that this was the first time anybody had asked him for membership or seniority status.

The nonunion longshoremen had other objections to the the Union's operation of the hiring hall. Jones testified that they were not referred for work because of the hiring of ''sons-in-law and girlfriends and cousins and all sorts of things.'' According to Jones, Scriven told the men on numerous occasions that they could not work because 10 to 20 women had to be given jobs driving new automobiles off the ships. Alleged discriminatee Carreker testified that he complained that women were being given jobs driving new cars off the ships, but were not assigned to ''throwing sacks.'' Jones said that it was unfair to allow women to ''drive Nissans off a ship,'' but not to ''throw sacks of feed.'' The basic complaint was that the work was not distributed fairly.

As indicated, several individuals discussed their problems with Union President Scriven on the morning of May 7, a Monday. Later that day, 11 nonunion individuals and 2 union members went to the hall of a sister local in Savannah, and talked with the business agent. They also talked on a speaker phone with John Mackey, an officer of the International. Their object was to determine whether individuals with 700 hours of work for 3 years had seniority in work assignments. They asked Mackey to come to Brunswick to discuss these matters. Mackey requested their names and social security account numbers, and initially agreed to come to Brunswick. However, as he testified, he changed his mind about this visit because he did not want to interfere with the local's ''autonomy.''

Jones and Carreker affirmed without contradiction that they returned from Savannah to Brunswick the same day, and attended a shapeup the next morning.[5] According to Jones, Scriven was standing on the podium, and the men were below him on the floor. Jones testified that Scriven said ''the Savannah boys'' might as well ''step back,'' because they were not going to get any work until Mackey arrived. Mackey ''ran'' Savannah, but Scriven ran Brunswick ''the way he [saw] fit.'' The headers heard these statements according to Jones. The union members and all the permit men except those who went to Savannah were referred to jobs, according to Jones. Carreker testified he returned to the Brunswick hall on Monday evening and saw Scriven, who ''made it known that he knew about our trip to Savannah.'' At a shape up the next morning according to Carreker, Scriven said that all the ''Savannah boys'' might as well ''back up,'' because they would not get work until Scriven saw fit.

Jones and Carreker were corroborated by Deston Cohen, a nonunion longshoreman who made the trip to Savannah. According to Cohen, Scriven stated on two occasions that ''none of the Savannah boys'' was to be hired.

Edward Cooper, a header and a member of the Union's executive board, testified that he did not hear Scriven making any such statement. However, Cohen affirmed that there were three headers, including Cooper, and stated his belief that a header other than Cooper was present when Scriven made the statement attributed to him.

Jones further testified that he reported for shape up every day that work was ''on the board'' for the following 2-weeks. During this period, union and nonunion (work permit) individuals were referred for jobs, except for the 11 nonunion individuals who went to Savannah.

Scriven denied knowledge that the Savannah group had talked with Mackey, whom he identified as his superior. Scriven also denied having knowledge of the trip to Savannah on the day that it occurred, and denied being in Brunswick on May 7 or 8—he was in Miami for 6 or 7 days ''negotiating,'' and did not attend a shape up in Brunswick the morning following the trip to Savannah. Scriven also denied making the statements attributed to him by Jones and Carreker. Although, as indicated he admitted during prior examination by the General Counsel that a group of individuals asked him for union membership while he was packing for a trip to Miami, Scriven later contended that he was in Miami on the day that the group left for Savannah, and denied having any conversation with them prior to the trip.

Jones testified that the group that went to Savannah retained an attorney and went with him to the Union hall on the afternoon of Friday, May 11, the day that Mackey told them he would arrive. As indicated, Mackey had changed his mind about this visit, and did not appear. Jones affirmed that Union President Scriven did not allow the group to enter the union hall. Their attorney did go in and talk to Scriven. Except for Scriven's assertion that he had been in Miami for 6 or 7 days (from Monday, May 7), his testimony does not address what happened the following Friday.

### 2. Factual analysis

The contradiction in Scriven's testimony on whether he talked with the group before the Savannah trip is obvious. In addition, he was an evasive and argumentative witness. Jones, Carreker, and Cohen, on the other hand, had truthful demeanors. Accordingly, I find that Jones and perhaps other nonunion individuals voiced their complaints to Union President Scriven on at least one occasion prior to May 7. Scriven replied that they had no seniority and worked only as needed. Several of these individuals again stated their concerns to Scriven on the morning of May 7, and went to a sister local in Savannah the same day for the purpose of ascertaining their seniority rights. In Savannah, they talked by speaker phone with John Mackey, an International officer and Scriven's superior. He promised to come to Brunswick the following Friday.

These individuals returned to Brunswick the same day. I do not credit Scriven's statement that he was in Miami for 6 or 7 days beginning May 7. Instead, I accept Carreker's testimony that Scriven was in Brunswick on Monday evening, and said that he knew about the trip to Savannah. I further credit the testimonies of Jones, Carreker, and Cohen that Scriven, at a shape up the following morning, ordered headers not to hire any of the ''Savannah boys,'' and said that they would not work until Scriven ''saw fit.'' I give little weight to Cooper's assertion that he did not hear any such statement, since it is possible (based on Cohen's testimony) that Cooper was not in the hall at that time.

[5] Jones stated that the shape-up took place either Monday night or Tuesday morning, but Carreker affirmed that it was the morning following their return from Brunswick.

None of the 11 nonunion men who went to Savannah received referrals for 2 weeks after Scriven's statement, although work was available.

Jones, Carreker, and the other nonunion individuals who went to Savannah hired an attorney, and went to meet Mackey at the union hall the following Friday, May 11. Mackey did not arrive. Although Union President Scriven talked with the attorney, he excluded the individuals from the hall.

### C. *The Executive Board Meeting, the Apologies, and the 90-day ''probation''*

On May 19 or 20, Scriven told individuals who utilized the hiring hall that he was going to call a meeting at which the individuals who went to Savannah could apologize and go back to work.[6] He also posted a notice on the union bulletin board that the 11 nonunion men who went to Savannah were to attend an executive board meeting.[7]

The meeting was held on May 21; Scriven presided, and five to six board members were present. Also present were the 11 nonunion individuals who had gone to Savannah, but not the two union members.[8] Business Agent Walter Miller said that the men who went to Savannah had to apologize for ''going over the President's head, ''and either Miller or Board member John Carter recommended a fine.[9]

Each of the 11 nonunion individuals got up individually and apologized. Jones and Carreker had to do so twice because, according to Carreker, they were perceived as the ringleaders of the trip to Savannah. Jones' apology consisted of an acknowledgment that he might have gone about it ''the wrong way,'' but that if he had to do it again, he would do ''the same thing.''

In addition to the requirement of apologies, all the nonunion individuals who went to Savannah were placed on a 90-day ''probation.'' Jones testified that Scriven announced this as the result of their having gone ''over his head.''

Scriven evaded questions on whether the apologies even took place, and denied that anybody other than Jones and Carreker was placed on ''probation.'' I do not credit his testimony. The union president acknowledged that there was no provision in the Union's manual for ''probation,'' which he defined as ''being watched.''

Subsequent to the executive board meeting on May 21, the individuals who went to Savannah received normal work referrals.

### D. *The 90-day Suspensions of Jones and Carreker*

#### 1. The suspensions

Under date of June 29, Scriven and Recording Secretary Stephens sent almost identical letters to Jones and Carreker informing them that they had been ''suspended from longshoremen work'' for 90 days because of certain ''incidents.''[10] These were stated to be ''insubordination'' according to the ''Labor Agreement: Paragraph 13-D of the Contract Book.''[11] Scriven agreed that these were the only suspensions which took place during his administration. Carreker testified without contradiction that Union Vice President W. L. Dixon and Irvin Crooks, both board members, told him that they had no knowledge of the letter sent to him.

#### 2. Jones' asserted misconduct

Although Jones testified that he was suspended in accordance with the terms of the letter, he did not clearly specify that the suspensions in fact ended after 90 days.

Jones described an incident involving Ronald Coleman, whom he identified as Scriven's stepson. Jones is a licensed bondsman, and had advanced about $600 to Coleman to get him out of jail. Coleman did not make payment, and a dispute over this matter took place behind the union hall. The record is unclear whether the incident involved merely words or a fight. Although Jones answered leading questions about a ''fight,'' he denied knowledge that any blows were exchanged, and said that the two were ''arguing.'' Coleman went to the trunk of his car, and Jones took a pocket knife out of his pocket.[12] He testified that his intention was to stand his ground and see what Coleman did. The latter went into the union hall. Clifford Staley, a witness for Respondent, testified that the two men were ''arguing,'' and that he saw Coleman go to his car. Jones took a pocket knife out of his trousers and opened it. Asked whether Coleman stood up at that point, Staley replied that he remained seated, and later went into the union hall. Scriven, without being asked, asserted that Jones ''fought'' Coleman, and ''had a knife at his throat to cut him.'' Scriven did not specify the source of his knowledge.

I reject Scriven's version. Staley partially corroborated Jones, and I credit their account of the incident.

Jones described other instances of conflict, one involving himself. About 2-1/2 years before, Jones and another longshoreman had an ''altercation,'' and Scriven gave both of them a week's suspension. However, 10 minutes later, after the other longshoreman had left, Scriven told Jones to disregard the suspension because he was ''too valuable to lose.''

Jones testified about an incident involving Robert Lambert, a son-in-law of Scriven. A stevedore almost hit Lambert with

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[6] Testimony Deston Cohen.

[7] Testimony of Bruce Carreker.

[8] Testimony of Ronnie L. Jones.

[9] Testimonies of Jones and Carreker.

[10] Each letter announced that an executive board meeting had taken place on June 28, that the individuals had been placed on probation on May 21, and that the further suspension was because of ''incidents''—in Jones' case, ''the incident that happen [sic] between you and Ronald Coleman on the Union Property on 6/28/90,'' and, in Carreker's case, ''the incident that happen [sic] between you and Allsouth Stevedore on 6/21/90.'' (G.C. Exhs. 3, 5.)

[11] Sec. 13(D) of the contract is a long section dealing with the obligations of the parties under various circumstances, and does not mention ''insubordination.'' Sec. 13(E) states that neither party shall ''uphold incompetency, shirking of work, insubordination or the use of abusive language, and personnel guilty of these offenses shall be dealt with as circumstances require.'' A list of ''misconduct offenses'' follows—pilferage, violence, intoxication, and narcotics and substance abuse—together with their listed penalties. The penalty for the first misconduct offense is 60 days suspension in all instances except those of narcotics abuse, in which case it is 2 years' suspension (G.C. Exh. 4, pp. 21–29).

[12] The contract states that any one found ''guilty of displaying or knowingly possessing a dangerous weapon at any facility normally considered a work place'' has committed a ''misconduct'' offense. As indicated, the penalty for a first violation is 60-day suspension. (G.C. Exh. 4, p. 61.) Jones testified that everybody carried a pocket knife.

a forklift, and Lambert drew a machete. Scriven arrived on the scene, and took the machete away from Lambert, who was not disciplined.

In another incident during Scriven's administration, a gun was drawn during an altercation between a business agent and a foreman, but nobody was disciplined.

### 3. Carreker's asserted misconduct

In response to the union suspension letter asserting an incident between Carreker and an Allsouth stevedore, Carreker testified briefly that he could not get a load into a ship without endangering the lives of men working in the ship, that the stevedore started cursing, and that Carreker cursed in return. Later, the stevedore apologized.

Edward Cooper, a header and a member of the Union's executive board, described the incident in greater detail. Carreker expressed concern about the safety of men working below a load of paper. Accordingly, he did not place the bale at the position specified by the stevedore. The latter cursed Carreker and a ''barrage'' of profanity followed.

The Union elicited other evidence of Carreker's cursing, not mentioned in the suspension letter. Essie Kitchen, Scriven's secretary, testified that she heard Carreker cursing on four occasions, principally against headers for hiring women. Carreker contended that all he said was that, if he had to ''throw sacks,'' the women could do the same. The record contains evidence that profanity is customary on the waterfront.

Carreker testified that about 25 days after receiving his letter of suspension he asked Scriven for permission to appear before the executive board. The request was granted, and Carreker appeared before the Board about a month and a half after the letter of suspension. He explained the incident involving the Allsouth stevedore, and, the next day, Scriven told him that he could go back to work. Carreker refused this offer because, he said, it was not in writing as was the original suspension. The record is unclear as to the date Carreker received and accepted referrals thereafter.

### E. *Factual Summary and Legal Analysis*

The evidence shows the Union operates an exclusive hiring hall, and gives preference in the form of seniority to its members in referrals for employment to employer members of the Association. It is well established that this is violative of Section 8(b)(1)(A) of the Act,[13] and I so find. This conclusion also applies to Respondent's denial of seniority to Ronnie L. Jones and Bruce Carreker because they were not union members.

It is also clear that Jones, Carreker, and other nonunion applicants for employment protested the Union's method of operating the hiring hall. Specifically, they objected to the seniority given to union members over nonunion applicants, and requested membership themselves. In addition, they objected to the failure of the union president to adhere to a promise to give nonunion applicants who had worked a certain number of hours preference over others who had not done so. They also protested the Union's referral of relatives and friends of union officials, and to preference given to female applicants in referral to easier jobs. In addition to meeting with the union president to voice their protest, Jones, Carreker, 11 nonunion applicants and union members made a trip to a sister local in Savannah, where they spoke on the telephone with an official of the International. These were all protected activities, and warrant a conclusion that these individuals were dissidents.

On the Union's president's order, the dissidents were denied referral from May 8 to 21. At a shapeup on May 8, the union president stated that the ''Savannah boys'' had to ''step back,'' and were not to be referred for jobs. Thereafter, at an executive board meeting, Jones, Carreker, and the 11 nonunion members of the Savannah contingent—but not the union members—were required to apologize (Jones and Carreker twice), and were placed on 90-day ''probation,'' a penalty for which there is no provision in the Union's rules. They were being ''watched'' according to the union president.

Although Jones and Carreker were put on referral status after the Executive Board meeting on May 21, they were ''suspended'' on June 29 and again denied referrals for employment. The suspension letters mention the prior ''probation,'' and cite various ''incidents'' justifying the suspension. Two members of the executive board had no knowledge of the suspensions.

Jones had a dispute over a debt with Ronald Coleman, the union president's stepson. It took place behind the union hall. After Coleman went to his car and returned, Jones took a pocket knife out of his pocket and opened it. Coleman remained seated, and later went into the union hall. Jones was not asked any questions about the incident.

Jones had previously been involved in an altercation where he and another individual were suspended. However, Jones' suspension was immediately revoked because he was ''too valuable,'' in the opinion of the union president. In other incidents, a son-in-law of the union president brandished a machete against a stevedore, and a gun was drawn in an altercation between a business agent and a foreman. Neither of these incidents resulted in any discipline. The suspensions of Jones and Carreker were the only suspensions during the union president's administration except for a week's suspension of Jones and another stevedore, which was revoked in Jones' case. They exceeded in severity the penalty for more serious offenses listed in the contract.

Carreker's asserted misconduct involved an incident where he believed that a stevedore's order was unsafe. The stevedore initiated profanity—commonplace on the waterfront—and Carreker responded. About a month and a half later, Carreker appeared before the executive board and explained the incident. The union president verbally offered to lift the suspension the next day, but Carreker rejected the offer because, unlike the suspension, it was not in writing. It is unclear whether the suspension was limited to the 90-days set forth in the letter.

The evidence thus proves that the initial refusal to refer Jones and Carreker from May 8 until May 21 was caused by their opposition to the Union's hiring policies, and, accordingly, was discriminatorily motivated. It is well established that such action is violative of Section 8(b)(1)(A) and (2) of the Act.[14] The same conclusion is warranted with respect to

[13] *Wolf Trap Foundation*, 287 NLRB 1040 (1988); *Cargo Handlers*, 159 NLRB 321 (1966).

[14] *Longshoremen's ILA Local 1408 (Jacksonville Maritime Assn.)*, 258 NLRB 132 (1981), enfd. 705 F.2d 1549 (11th Cir. 1983); *Glenn*

the 90-day probation—discipline not even provided for in the Union's rules.

The record further supports an inference that the June 29 suspensions were also discriminatorily motivated. The suspension letters specifically mention the prior probation imposed because of the discriminatees' protected activities. Jones' asserted misconduct, taking a pocket knife out of his pocket and opening it after the other disputant went to his automobile, is minor compared to other incidents—involving a machete and a firearm—which did not result in discipline. Jones himself was relieved of suspension imposed by the union president prior to Jones' dissident activities. Carreker's asserted misconduct was trivial, a fact tacitly admitted by the union president's verbal assurance, about a month and a half later and after another executive board meeting, that Carreker could go back to work.

I conclude that the suspensions were discriminatorily motivated. I base this on the evidence of continuing animus in the suspension letters, the Union's failure to investigate the Coleman incident fully, the relatively minor nature of Jones' actions compared to other more serious incidents involving other workers which did not result in discipline, the fact that Jones was released from similar discipline prior to his protected activities, the triviality of Carreker's asserted offenses, the fact that the 90-day suspensions exceeded in severity the 60 days provided for in the contract for much more serious first offenses, and the fact these two suspensions, with a minor exception, were the only ones imposed during the union president's administration despite other incidents involving deadly weapons. Accordingly, I conclude that the Union's asserted reasons for the suspensions were pretextual and that the suspensions on June 29 violated Section 8(b)(1)(A) and (2) of the Act. The record is unclear whether they actually ended 90 days thereafter.

The illegality of Carreker's suspension was not cured by the Union president's statement to him, about a month and a half later, that he could go back to work. The offer did not meet the Board's test for repudiation of prior unlawful conduct—adequate publication of the repudiation, assurances that the unlawful conduct would not be repeated, and no proscribed conduct thereafter. *Passavant Memorial Area Hospital*, 237 NLRB 138 (1978). Respondent's unlawful suspension of Jones probably continued after the Union president's statement to Carreker. Further, the offer did not include a proposed remedy for any loss of earnings by Carreker because of the unlawful suspension.

Finally, as alleged in the complaint, the union president's statements at the shape up on May 8—that the ''Savannah boys'' would not be referred for work—informed other persons at the shape up that other protected activities might also result in union reprisals. The statement was coercive and violated Section 8(b)(1)(A). *Glenn Machine Works*, supra, fn 14.

In accordance with my findings above, I make the following

## CONCLUSIONS OF LAW

1. Savannah Maritime Association and its employer members are employers engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. Respondent Union is a labor organization within the meaning of Section 2(5) of the Act.

3. Respondent operates an exclusive hiring hall whereby it refers applicants for employment with members of the Association.

4. Respondent gives preference to its members in the form of seniority in its referrals for employment from its hiring hall, and refers other applicants only after union members have been referred, thereby restraining or coercing employees in violation of Section 8(b)(1)(A) of the Act.

5. Beginning May 8, 1990, and continuing to May 21, 1990, Respondent refused to refer Ronnie L. Jones and Bruce Carreker for employment because they had criticized Respondent's operation of its hiring hall, thus causing employers to discriminate against these employees within the meaning of Section 8(a)(3), and thereby itself engaging in unfair labor practices within the meaning of Section 8(b)(1)(A) and (2) of the Act.

6. On May 21, 1990, Respondent placed Ronnie L. Jones and Bruce Carreker on a 90-day probation because of their above-described protected activities, thereby violating Section 8(b)(1)(A) of the Act.

7. On June 29, 1990, Respondent placed Ronnie L. Jones and Bruce Carreker on suspension and refused to refer them for employment for an undetermined period of time because of their protected activities, thus violating Section 8(b)(1)(A) and (2) of the Act.

8. On May 8, 1990, the union president told employees at a shape up that Jones, Carreker, and other employees who had engaged in protected activities would not be referred for employment because of those activities, thereby restraining or coercing the employees at the shape up within the meaning of Section 8(b)(1)(A).

9. The foregoing unfair labor practices affect commerce within the meaning of Section 2(2), (6), and (7) of the Act.

10. Respondent has not violated the Act except as specified.

## THE REMEDY

Having found that the Respondent Union has engaged in certain unfair labor practices, I shall recommend that it be required to cease and desist therefrom, and to take certain affirmative action designed to effectuate the policies of the Act.

I shall recommend that the Respondent be ordered to resume referral services to Ronnie L. Jones and Bruce Carreker in a nondiscriminatory manner if it has not already done so, to notify them of this fact, and to make each of them whole for any loss of earnings they may have suffered by reason of its discrimination against them from May 8 to 21, 1990, and again from June 29, 1990, to the date that it resumed offering referral service to them,[15] or, if such resumption has not occurred, until the date that it does so, less interim earnings, in the manner prescribed in *F. W. Woolworth Co.*, 90

*Machine Workers*, 277 NLRB 658 (1985); *Teamsters Local 519 (Rust Engineering)*, 275 NLRB 433 (1985).

[15] The Union's verbal offer to Carreker, about a month and a half after June 29, to resume referral services shall not be deemed to toll Carreker's backpay period, for the reasons stated above.

NLRB 1173 (1987), with interest as computed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).[16]

I shall also recommend that Respondent be required to makeits records available for the purpose of computation of the amounts due the discriminatees, and to post appropriate notices.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[17]

## ORDER

The Respondent, International Longshoreman Association Local 1423, its officers, agents, and representatives, shall

1. Cease and desist from

(a) Operating its hiring hall in a manner which gives preference for employment to members of a union over nonmembers.

(b) Putting Ronnie L. Jones, Bruce Carreker, or any other employee or applicant for employment on probation, and from denying them referral for employment or otherwise discriminating against them because they are not members of a union or because of their protected activities.

(c) Causing or attempting to cause any employer to deny employment to, or in any other manner to discriminate against, Ronnie L. Jones, Bruce Carreker, or any other employee or applicant for employment, in violation of Section 8(a)(3) of the National Labor Relations Act.

(d) Informing employees or applicants for employment that other employees or applicants have been denied referral for employment because of their protected activities.

(e) In any like or related manner restraining or coercing employees or applicants for employment in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Refer Ronnie L. Jones and Bruce Carreker for employment to positions for which they are qualified on an equal and nondiscriminatory basis with other employees and applicants.

(b) Notify Ronnie L. Jones and Bruce Carreker, separately and in writing, that Respondent's hiring hall will be available to them on an equal and nondiscriminatory basis with other employees and applicants.

(c) Make Ronnie L. Jones and Bruce Carreker whole for any loss of earnings either may have suffered because of the discrimination against them, in the manner set forth in the remedy section of this decision.

(d) Maintain and, on request, make available to the Board or its agents, for examination or copying, all work requests, employment referrals, and any other documents and records showing job referrals and the basis for such referrals of employees, members, and applicants, which are necessary to compute and analyze the amount of backpay due Jones and Carreker.

(e) Post at its business offices, hiring hall, and meeting places copies of the attached notice marked ''Appendix.''[18] Copies of the notice, on forms provided by the Regional Director for Region 12, after being signed by Respondent's authorized representative, shall be posted by Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to members are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(f) Notify the Regional Director within within 20 days from the date of this Order what steps the Respondent has taken to comply.

IT IS FURTHER ORDERED that any allegation of the complaint not found herein to be an unfair labor practice is dismissed.

[16] Under *New Horizons*, interest is computed at the ''short-term Federal rate'' for the underpayment of taxes as set out in the 1986 amendments to 26 U.S.C. § 6621. Interest accrued before January 1, 1987 (the effective date of the amendment), shall be computed as in *Florida Steel Corp.*, 231 NLRB 651 (1977).

[17] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

[18] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading ''Posted by Order of the National Labor Relations Board'' shall read ''Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board.''